

A RESOLUTION BY

07-R-0606

CLAIR MULLER

07-R-0606

A RESOLUTION TO APPROVE A PROPOSED AMENDMENT TO THE RAPID TRANSIT CONTRACT AND ASSISTANCE AGREEMENT DATED SEPTEMBER 1, 1971 BETWEEN THE CITY OF ATLANTA, FULTON AND DEKALB COUNTIES AND THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY SO AS TO EFFECT CERTAIN CHANGES IN THE SYSTEM AS DESCRIBED IN THE RAPID TRANSIT CONTRACT AND ASSISTANCE AGREEMENT; TO APPROVE A WRITTEN AMENDMENT TO THE RAPID TRANSIT CONTRACT AND ASSISTANCE AGREEMENT INCORPORATING THEREIN THE ACTION HEREBY TAKEN AND TO AUTHORIZE THE MAYOR TO EXECUTE SUCH AMENDMENT; TO SPECIFY THE EFFECTIVE DATE FOR THIS RESOLUTION; TO RESCIND CONFLICTING RESOLUTIONS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (the "City"), Fulton and DeKalb Counties and the Metropolitan Atlanta Rapid Transit Authority (the "Authority") previously entered into a Rapid Transit Contract and Assistance Agreement (the "Contract") dated September 1, 1971, setting forth the proposed Rapid Transit System (the "System") for the Metropolitan Atlanta area, which was approved at the November 9, 1971 referendum; and

WHEREAS, the Authority, the City, Fulton and DeKalb Counties, in accordance with Sections 4(d) and 5 of the Contract, have previously made eleven amendments to the Contract, making changes to the System; and

WHEREAS, Section 2(d) of the Contract, as heretofore amended, provides that Fulton and DeKalb Counties shall levy a retail sales and use tax for rapid transit purposes at the maximum rate permitted by law from time to time during the full term of the Contract, and recites that the maximum rate of the said tax shall be one percent until June 30, 2032, and one-half of one percent thereafter; and

WHEREAS, the General Assembly by an Act (H.B. 1615) approved March 16, 2000, amended Section 25 of the Act to provide that the maximum rate of the said tax shall be one percent until and including June 30, 2047, and shall thereafter be reduced to one-half of one percent; and

WHEREAS, the Authority, Atlanta, Fulton and DeKalb Counties desire to amend Section 2(d) of the Contract to conform to the said amendment of Section 25 of the Act, and to extend the term of the Contract to expire on the date that is fifty years after the effective date of the Twelfth Amendment to the Contract; and

WHEREAS, the Authority's Board of Directors has adopted said changes (as more fully described in "Exhibit A" attached hereto) to the text of the Contract; and

WHEREAS, the Authority's Board of Directors has adopted certain changes (as described in "Exhibit A") to the System which will effect a deviation from the System described in the Engineering Report; and

WHEREAS, the City desires that MARTA consider the feasibility of providing funding for the Peachtree Streetcar Project; and

WHEREAS, the Contract requires approval of any such changes in the text of the Contract, of any such deviations from the Engineering Report and of any such extensions beyond the Metropolitan Atlanta area by a majority of the votes entitled to be cast thereon under the Contract, and the Authority has requested that the city vote its approval of such changes by appropriate formal action.

THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES as follows:

That the Mayor is authorized to execute, on behalf of the City of Atlanta, the Twelfth Amendment to the Rapid Transit Contract and Assistance Agreement between the City of Atlanta, Fulton and DeKalb Counties and the Metropolitan Atlanta Rapid Transit Authority (hereinafter sometimes called the "Authority" or "MARTA"). Said Amendment shall:

1- Amend the second sentence of Subsection 2(d) of the Contract, as heretofore amended, by inserting after the following:

"and as further amended by Act 779 (H. B. 1502) approved March 13, 1990 (Ga. L. 1990, p. 3860,"

the following:

"and as further amended by an Act (H. B. 1615) approved March 16, 2000 (Ga. L. 2000, p. 4567),"

and by striking the following"

"until and including June 30, 2032,"

and by inserting in lieu thereof the following"

"until and including June 30, 2047,"

so that when so amended the second sentence of Subsection 2(d) of the Contract shall read as follows:

"It is understood and agreed that the Act of the General Assembly of the State of Georgia approved March 16, 1971 (Ga. L. 1971, p. 2082), as amended by Act 623 (H. B. 515) approved April 16, 1979 (Ga. L. 1979, p. 4634), and as further amended by Act 449 (H. B. 339) approved March 29, 1983 (Ga. L. 1983, p. 1079), and as further amended by Act 779 (H. B. 1502) approved March 13, 1990 (Ga. Laws 1990, p. 3860), **and as further amended by an Act (H. B. 1615)**

approved March 16, 2000 (Ga. L 2000, p. 4567), which authorizes the levy of the aforesaid retail sales and use tax for rapid transit purposes, provides for a maximum rate of taxation of one percent **until and including June 30, 2047**, and at a maximum rate of one-half of one percent thereafter and that, to the fullest extent permitted by law, those entities which, from time to time, shall lend monies to the Authority shall be deemed to have relied for repayment security on this contract and agreement and they shall be third party beneficiaries hereof, such reliance relating particularly to the covenants of Fulton, DeKalb, Clayton and Gwinnett hereby expressed that the rates of taxation to be levied during the full term of this contract and agreement shall not be less than the maximum rates now set forth in the aforesaid Act.”

- 2- Amend the Contract so that its term shall be extended to expire at midnight on the date that is fifty years after the effective date of the Twelfth Amendment to the Contract.
- 3- Amend the Engineering Report to:
 - a. add a Bus Rapid Transit segment to extend west from the Hamilton E. Holmes Station, formerly the Hightower Station, within the I-20 West highway facility, to stations located at the interchange of I-20 and MLK, Jr. Drive and the southwest quadrant of the interchange of I-20 and Fulton Industrial Boulevard; and
 - b. to include the alignment for the I-20 East Bus Rapid Transit segment to extend from the Garnett Station to an area in the vicinity of the Mall at Stonecrest in DeKalb County; and

- c. to include a Beltline Corridor encompassing the Downtown and Midtown areas of Atlanta along the existing Southern Railway, Atlanta and West Point Railroad, Louisville and Nashville Railroad and Seaboard Air Line Railroad rights-of-way; and
- d. to include a transit segment in the Clifton corridor connecting the Lindbergh Center Station to the Emory University Campus.

BE IT FURTHER RESOLVED that all Resolutions and parts of Resolutions in conflict herewith are hereby rescinded, only to the extent of such conflict.

EXHIBIT "A"

**TWELFTH AMENDMENT TO RAPID TRANSIT CONTRACT
AND ASSISTANCE AGREEMENT**

THIS AMENDMENT, made and entered into as of the day of , 2007, by, between, and among Fulton County, a political subdivision of the State of Georgia (hereinafter sometimes called "Fulton"), DeKalb County, a political subdivision of the State of Georgia (hereinafter sometimes called "DeKalb"), the City of Atlanta, a municipal corporation of the State of Georgia (hereinafter sometimes called "Atlanta"), and the Metropolitan Atlanta Rapid Transit Authority (hereinafter sometimes called the "Authority"), a public body corporate and a joint instrumentality of Fulton, DeKalb, Clayton County, Gwinnett County, and Atlanta, organized and existing under an Act of the General Assembly of the State of Georgia, approved March 10, 1965, (Ga. L. 1965, p. 2243), said Act having been amended by an Act of the General Assembly approved March 4, 1966, (Ga. L. 1966, p. 3264), by an Act approved March 16, 1971, (Ga. L. 1971, p. 2082), by an Act approved March 16, 1971, (Ga. L. 1971, p. 2092), by an Act approved March 17, 1973, (Ga. L. 1973, p. 141), by an Act approved March 21, 1974, (Ga. L. 1974, p. 2617), by an Act approved March 21, 1974, (Ga. L. 1974p, 2627), by an Act approved February 20, 1976, (Ga. L. 1976, p. 3092), by an Act approved March 24, 1976, (Ga. L. 1976, p. 3098), by an Act approved March 24, 1976, (Ga. L. 1976, p. 3098), by an Act approved March 24, 1976, (Ga. L. 1976, p. 3104), by an Act approved March 31, 1976, (Ga. L. p. 3407, by an Act approved March 23, 1977, (Ga. L. 1977, p. 724), by an Act approved March 30, 1977, (Ga. L. 1977, p. 1211), by an Act approved April 8, 1977, (Ga. L. 1977, p. 1312), by an Act approved April 16, 1979, (Ga. L. 1979, p. 4634), by an Act approved March 27, 1980, (Ga. L. 1980, p. 3831), by an Act approved March 27, 1980, (Ga. L. 1980, p. 4333), by an Act approved April 7, 1981, (Ga. L. 1981, p. 4289), by an Act approved April 20, 1982, (Ga. L. 1982, p. 5101), by an Act approved March 18, 1983, (Ga. L. 1983, p. 764), by an Act approved March 14, 1985, (Ga. L. 1985, p. 3609), by an Act approved March 14, 1986, (Ga. L. 1986, p. 3756), by an Act approved March 20, 1986,

(Ga. L. 1986 p. 4115), by an Act approved January 29, 1988, (Ga. L. 1988, p. 3510), by an Act approved April 11, 1988, (Ga. L. 1988, p. 5013), by an Act approved April 12, 1988, (Ga. L. 1988, p. 5023), by an Act approved March 30, 1989, (Ga. L. 1989, p. 4313), by an Act approved March 13, 1990, (Ga. L. 1990, p. 3860), by an Act approved April 4, 1991 (Ga. L. 1991, p. 4626), by an Act approved April 11, 1991 (Ga. L. 1991, p. 4755), by an Act approved April 11, 1991 (Ga. L. 1991, p. 4761), by an Act approved April 7, 1992 (Ga. L. 1992, p. 5690), by an Act approved April 9, 1993 (Ga. L. 1993, p. 5251), by an Act approved April 8, 1994 (Ga. L. 1994, p. 4952), by an Act approved April 8, 1994 (Ga. L. 1994, p. 4959), by an Act approved April 1, 1996 (Ga. L. 1996, p. 3717), by an Act approved April 8, 1996 (Ga. L. 1996, p. 4314), by an Act approved March 27, 1998 (Ga. L. 1998, p. 3561), by an Act approved April 14, 1998 (Ga. L. 1998, p. 4450), by an Act approved April 19, 2000 (Ga. L. 2000, p. 4492), by an Act approved May 1, 2000 (Ga. L. 2000, p. 4567), by an Act approved May 10, 2002 (Ga. L. 2002, p. 5683), by an Act approved May 10, 2002 (Ga. L. 2002, p. 5690), by an Act approved May 10, 2002 (Ga. L. 2002, p. 5698), by an Act approved June 4, 2003 (Ga. L. 2003, p. 4740), by an Act approved April 27, 2006 (Ga. L. 2006, p. 3746), and by an Act approved April 27, 2006 (Ga. L. 2006 p. 3751)(hereinafter sometimes referred to as the "Act");

WITNESSETH THAT:

Whereas, the Authority, Atlanta, Fulton, and DeKalb have previously entered into a Rapid Transit Contract and Assistance Agreement as of the first day of September, 1971 (hereinafter called the "Contract"), which sets forth and delineates the respective duties, obligations, and commitments of the parties hereto to each other with respect to construction, development, and implementation of the Authority's rapid transit system (hereinafter called the "System") and incorporates by reference the Engineering Report dated September, 1971, which embodies preliminary plans and recommendations for the acquisition and construction of the System; and

Whereas, The Authority, Atlanta, Fulton, and DeKalb, in accordance with Sections 4(d) and 5 of the Contract, have previously made eleven amendments to the Contract making changes to the System; and

Whereas, Section 2(d) of the Contract, as heretofore amended, provides that Fulton and DeKalb shall levy a retail sales and use tax for rapid transit purposes at the maximum rate permitted by law from time to time during the full term of the Contract, and recites that the maximum rate of the said tax shall be one percent until June 30, 2032, and one-half of one percent thereafter; and

Whereas, the General Assembly by an Act (H.B. 1615) approved March 16, 2000, amended Section 25 of the Act to provide that the maximum rate of the said tax shall be one percent until and including June 30, 2047, and shall thereafter be reduced to one-half of one percent; and

Whereas, the Authority, Atlanta, Fulton, and DeKalb desire to amend Section 2(d) of the Contract to conform to the said amendment of Section 25 of the Act, and to extend the term of the Contract to expire on the date that is fifty years after the effective date of the Twelfth Amendment to the Rapid Transit Contract and Assistance Agreement between the City of Atlanta, Fulton and DeKalb Counties and the Metropolitan Atlanta Rapid Transit Authority; and

Whereas, the Authority, Atlanta, Fulton, and DeKalb desire to amend the Engineering Report to: add a Bus Rapid Transit segment to extend west from the Hamilton E. Holmes Station, formerly the Hightower Station, within the I-20 West highway facility, to stations located at the interchange of I-20 and MLK, Jr. Drive and the southwest quadrant of the interchange of I-20 and Fulton Industrial Boulevard; and to include the alignment for the I-20 East Bus Rapid Transit segment to extend from the Garnett Station to an area in the vicinity of the Mall at Stonecrest in DeKalb County; and to include a Beltline Corridor encompassing the Downtown and Midtown areas of Atlanta along the existing Southern Railway, Atlanta and West Point Railroad, Louisville and Nashville Railroad and

Seaboard Air Line Railroad rights-of-way; and to include a transit segment in the Clifton corridor connecting the Lindbergh Center Station to the Emory University Campus.

Whereas, on _____, 2007, the Authority adopted the aforesaid changes to the System and amendments to the Contract and the Engineering Report as described in Exhibit A attached hereto; and

Whereas, pursuant to Sections 4(d) and 5 of the Contract, approval by Fulton, DeKalb, and Atlanta of the said amendments to the Contract and changes to the Engineering Report has been given by appropriate and duly adopted resolutions, by DeKalb on _____, 2007, by Fulton on _____, 2007, and by Atlanta on _____, 2007; and

Whereas, pursuant to the said resolutions of approval and in accordance with the desires of the parties, Fulton, DeKalb, Atlanta, and the Authority hereby incorporate, establish, and bind each other to such amendments to the Contract and to the Engineering Report and provide evidence of their mutual agreement thereto:

NOW THEREFORE, in consideration of the premises and the undertakings hereinafter set forth, Fulton, DeKalb, Atlanta, and the Authority, each acting by and through its authorized officers, pursuant to a resolution or ordinance duly adopted and properly passed by its governing body, covenant and agree as follows:

Section 1. Fulton, DeKalb, Atlanta, and the Authority do hereby amend the second sentence of Subsection 2(d) of the Contract, as heretofore amended, by inserting after the following:

“and as further amended by Act 779 (H. B. 1502) approved March 13, 1990 (Ga. L. 1990, p. 3860,”

the following:

“and as further amended by an Act (H. B. 1615) approved March 16, 2000,”

and by striking the following”

“until and including June 30, 2032,”

and by inserting in lieu thereof the following”

“until and including June 30, 2047,”

so that when so amended the second sentence of Subsection 2(d) of the Contract shall read as follows:

“It is understood and agreed that the Act of the General Assembly of the State of Georgia approved March 16, 1971 (Ga. L. 1971, p. 2082), as amended by Act 623 (H. B. 515) approved April 16, 1979 (Ga. L. 1979, p. 4634), and as further amended by Act 449 (H. B. 339) approved March 29, 1983 (Ga. L. 1983, p. 1079), and as further amended by Act 779 (H. B. 1502) approved March 13, 1990 (Ga. Laws 1990, p. 3860), and as further amended by an Act (H. B. 1615) approved March 16, 2000 (Ga. L. 2000, p. 4567), which authorizes the levy of the aforesaid retail sales and use tax for rapid transit purposes, provides for a maximum rate of taxation of one percent until and including June 30, 2047, and at a maximum rate of one-half of one percent thereafter and that, to the fullest extent permitted by law, those entities which, from time to time, shall lend monies to the Authority shall be deemed to have relied for repayment security on this contract and agreement and they shall be third party beneficiaries hereof, such reliance relating particularly to the covenants of Fulton, DeKalb, Clayton and Gwinnett hereby expressed that the rates of taxation to be levies during the full term of this contract and agreement shall not be less than the maximum rates now set forth in the aforesaid Act.”

Section 2. Fulton, DeKalb, Atlanta, and the Authority recognize and acknowledge that while the Constitution and laws of the State of Georgia authorize a term of the Contract not to exceed fifty years, the Contract presently will expire at midnight on August 31, 2040. Fulton, DeKalb, Atlanta, and the Authority hereby agree that the term of the Con-

tract shall be extended and is hereby extended to expire at midnight on the date that is fifty years after the effective date of this Amendment.

Section 3. Fulton, DeKalb, Atlanta, and the Authority do hereby amend the Contract and the Engineering Report so as to make and incorporate certain substantial deviations from the Engineering Report as more fully described in Exhibit A attached hereto and by this reference made a part hereof.

It is hereby agreed that such changes constitute substantial deviations from the Engineering Report and, as required by the Contract, have been and hereby are appropriately and duly approved. It is further agreed that the final location and design of such changes in the Engineering Report shall be determined by the Authority in accordance with such approved environmental studies as may be required by State or federal law and regulations.

Section 4. The Engineering Report shall be deemed modified to the extent, and only to the extent, as is specifically provided herein. Any specific term or provision herein shall prevail over any inconsistent general or specific term or provision of the Engineering Report.

Section 5. The effective date of this amendment to the Contract and Engineering Report is _____, 2007, the said amendment having been approved on or before that date by a majority of Fulton, DeKalb, and Atlanta.

IN WITNESS WHEREOF, the parties hereto, each acting through its duly authorized officer, have caused this Amendment to the Rapid Transit Contract and Assistance Agreement to be executed in several counterparts, each of which may be considered an original without the presentation of the others, as of the day and year first above written.

[Signatures are on the following pages.]

Approved as to form:

FULTON COUNTY:

County Attorney

By: _____
Chairman, Board of
Commissioners

ATTEST:

Clerk

Approved as to form:

DeKALB COUNTY:

County Attorney

By: _____
Chief Executive Officer

ATTEST:

Clerk, Board of Commissioners

Approved as to form:

CITY of ATLANTA:

City Attorney

By: _____
Mayor

ATTEST:

City Clerk

Approved as to form:

METROPOLITAN ATLANTA
RAPID TRANSIT AUTHORITY:

Counsel

By: _____
General Manager/CEO

ATTEST:

Secretary